Supreme Court, U.S.
FILED

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No.

IN THE
Supreme Court of the United States

JEROLD DANIEL FRIEDMAN,
Also Known as JERRY FRIEDMAN,
Petitioner,

v.

SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, a California Partnership; KAISER FOUNDATION HOSPITALS, a California Corporation; and KAISER FOUNDATION HEALTH PLAN, INC., a California Corporation,
Respondents.

On Petition For Writ Of Certiorari
To The Court of Appeal of the State of California,
Second Appellate District, Division Five

PETITION FOR WRIT OF CERTIORARI

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33 p

QUESTIONS PRESENTED

1. Does the Establishment Clause in the First Amendment to the United States Constitution set the minimum standards for any religious discrimination laws?

2. Does a religious discrimination statute that limits those protected against religious discrimination to only those of "traditionally recognized" religions, or those like a "traditionally recognized" religion, thereby violate the Establishment Clause in the First Amendment to the United States Constitution?

3. Does a religious discrimination statute that limits those protected against religious discrimination to only those of "traditionally recognized" religions, or those like a "traditionally recognized" religion, thereby violate the Due Process Clause in the Fourteenth Amendment to the United States Constitution?

PARTIES TO THE PROCEEDING

Including the parties named in the caption of this Petition, the parties are:

Petitioners: Jerold Daniel Friedman, also known as Jerry Friedman ("Mr. Friedman"), an individual.

Respondents: Southern California Permanente Medical Group, a California Partnership; Kaiser Foundation Hospitals, a California Corporation; and Kaiser Foundation; Health Plan, Inc., a California Corporation, (cumulatively referred to herein as, "Kaiser").

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IN THE
SUPREME COURT OF THE UNITED STATES

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SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, a California partnership; KAISER FOUNDATION HOSPITALS, a California corporation; KAISER FOUNDATION HEALTH PLAN, INC., a California corporation,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL FOR THE SECOND APPELLATE DISTRICT, DIVISION FIVE, STATE OF CALIFORNIA, AND THE CALIFORNIA SUPREME COURT

OPINIONS BELOW

On January 26, 1999, Mr. Friedman filed a Charge of Discrimination with the United States Equal Employment Opportunity Commission. Such filing also constituted his Complaint of Discrimination with the California Department of Fair Employment and Housing ("DFEH"). On February 3, 1999, the DFEH issued a letter Notice of Right to Sue, authorizing Mr. Friedman to file a lawsuit in State Court within one-year thereafter.

On February 3, 2000, Mr. Friedman filed his Complaint

with the Superior Court of California for the County of Los Angeles. The Complaint alleged eleven (11) causes of action, including the first three (3) for employment discrimination, the first cause of action for employment discrimination against both Kaiser and his employment agency based on religion under California Government Code §12940, the second cause of action for failure to maintain a work environment free from discrimination under California Government Code §12940(i) against both Kaiser and his employment agency, and the third cause of action for retaliation against Kaiser only based on the allegation that Kaiser's conduct was retaliatory under Government Code §12940(f). The Kaiser Defendants filed their original Demurrer to the Complaint on March 24, 2000.

At the hearing of the original demurrer, on July 7, 2000, the Court took the matter under submission, and thereafter, sustained all of the demurrers to the FEHA religious discrimination causes of action, i.e., causes of action one, two and three, without leave to amend. [Appendix, p. 141a]. The remainder of the demurrers, i.e., the non-religious discrimination causes of action, were sustained with leave to amend. Causes of action ten and eleven were not a part of the demurrers that date. Essentially, the Demurrer to the first three causes of action was sustained because the Court believed that Veganism cannot be a religion or the equivalent of a religion under the FEHA statute, and refused the Plaintiff requested leave to amend on these causes of action related to religious discrimination and/or retaliation.

Mr. Friedman amended his complaint and filed a First Amended Complaint, on July 17, 2000. However, the portion of the Complaint dealing with employment discrimination against Kaiser was not allowed to be replead against Kaiser based upon the prior Order denying leave to amend. Therefore, and for that reason alone, the amended complaint was not plead against Kaiser for religious discrimination in the

amended complaint.

Kaiser set a new demurrer to the first amended complaint, which Mr. Friedman opposed. On August 16, 2000, the Court sustained all of the demurrers, with the exception of the tenth cause of action for breach of the implied covenant of good faith, which remained active. Kaiser filed their answer to the remaining tenth cause of action for breach of implied contract in the first amended complaint, on August 25, 2000.

On September 5, 2000, the Plaintiff filed a Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief and Request for Stay of Action Pending Determination of Writ, with the Court of Appeals. On or about September 13, 2000, the Court of Appeals summarily denied the Petition for Writ, presumably because Friedman had the right to file an appeal upon a Judgment being entered at the conclusion of this case, which he then did.

After initially proceeding on the remaining Tenth Cause of Action as to Kaiser, the Friedman voluntarily dismissed the remaining Tenth Cause of Action, with the express reservation that the remaining causes of action would be appealed.

After learning of the trial court's recusal of itself in this matter, Friedman filed a Motion to Amend Complaint, etc., which was filed March 8, 2001, which was denied. [Appendix, p. 149a, and p. 170a]. The Court did enter Judgment in favor of Kaiser on May 29, 2001. On May 7, 2001, the Friedman filed a Notice of Appeal from the Judgment in favor of Kaiser.

On September 13, 2002, the Court of Appeals filed a decision on this case affirming the lower court decision and setting forth a new rule of law with regard to the definition of "religious creed" under the FEHA. [Appendix, p. 1a]. The

Court of Appeals published the portion of the decision setting forth the new rule of law defining "religious creed" under the FEHA. [Appendix, p. 1a, and p. 47a]. In order to correct some minor typographical errors, the Court then issued an Order Modifying Opinion [No Change in Judgment], which was filed September 24, 2002. [Appendix, p. 45a]. A copy of the Decision as published is attached in the Appendix at page 47a. The cases official and unofficial citations are as follows: *Friedman v. Southern Cal. Permanente Medical Group,* 102 Cal.App.4th 39 , -- Cal.Rptr.2d - (2002).

Mr. Friedman filed a Petition for Rehearing, but the Petition was denied on October 7, 2002. [Appendix, p. 88a].

On October 23, , 2002, Mr. Friedman filed a Petition for Review with the California Supreme Court. [Appendix, p. 237a]. On November 26, 2002, the California Supreme Court denied review by Order. [Appendix, page 89a].

JURISDICTION

The date the judgment or order sought to be reviewed was entered on September 13, 2002. [Appendix, p. 1a]. A petition for rehearing was denied on October 7, 2002. [Appendix, p. 88a] Then on November 26, 2002, the California Supreme Court denied review. [Appendix, pages 89a].

This court is believed to have jurisdiction to review this matter on a writ of certiorari as to the judgment or order in question under *U.S.C.* § 1257. Final judgments rendered by a state's highest court, e.g., the California Supreme Court, are reviewable by writ of certiorari where the validity of any treaty or federal statute is drawn into question or where the constitutionality of a state law is in issue. 28 *U.S.C.* § 1257.

In that a proceeding in this Court may draw into the question the constitutionality of a statute of the State of

California, and since neither the State nor any agency, officer, or employee thereof is a party, it should be noted that 28 *U.S.C.* § 2403(b) may apply and thus a copy of this petition has been served upon the Attorney General of California.

RELEVANT STATUTORY PROVISIONS INVOLVED

First Amendment to United States Constitution
Tenth Amendment to United States Constitution
Fourteenth Amendment to United States Constitution
California Government Code §12926
California Government Code §12940
42 U.S.C. §2000e
42 U.S.C. §2000e-2
29 Code of Federal Regulations §1605.1
2 California Code of Regulations §7293.0
2 California Code of Regulations §7293.1
2 California Code of Regulations §7293.3
Internal Revenue Manual Handbook [7.8.1], 3.3.2

STATEMENT OF THE CASE

Petitioner Jerold Friedman is an Ethical Vegan. He holds those believes to the level others believe in a "traditional religion." Mr. Friedman refused to be vaccinated because it went against his Ethical Vegan beliefs. As a result his job offer with Kaiser was rescinded. The State Court, using a definition created and used by several Federal Courts, determined that an Ethical Vegan belief system does not qualify as a religious belief or creed under the religion discrimination in employment statute.

The underlying appeal arose from a Judgment [Appendix, p. 170a], incorporating the sustaining of Demurrers [Appendix, p. 126a], and the denials of a Motion and Requests for Leave to Amend [Appendix, p. 149]. Mr. Friedman raised the issue of the Establishment Clause in his Opposition to the Demurrer. [Appendix, p. 126a, and 132a, in

particular]. Mr. Friedman also raised the issue in his Motion to Amend his Complaint, [Appendix, p. 149a, and 158a, in particular], as well as in his appellate documents. He raised the issue in his Opening Brief on Appeal, [Appendix, p. 176a], and in his Petition for Rehearing, [Appendix, p. 222a, and pp. 230a-231a, in particular], and in his Petition for Review to the California Supreme Court, [Appendix, p. 237a, and pp. 263a-265a, in particular].

This case was primarily about Kaiser's failure to accommodate Mr. Friedman's religious ethical belief of not harming animals that is Mr. Friedman's ethical and moral equivalent of his religion. Mr. Friedman is an Ethical Vegan and was a Computer Technician working in a non-public, non-health care facility, warehouse for Kaiser in Downey, as a contract worker, having absolutely no contact with patients. Originally, Mr. Friedman's actual employment was with an employment agency. However, that employment agency (MacTemps, et al.), was dismissed after a settlement with them. After working for the employment agency, which entity contracted out Mr. Friedman's services to Kaiser, and after working for nearly one-year for Kaiser as a contract worker through this employment agency, Kaiser liked Mr. Friedman's work so well that Kaiser offered Mr. Friedman an in-house position doing the same work, at the same location, continuing to also have absolutely no contact with patients. However, Kaiser required Mr. Friedman to undergo a health/vaccination screening.

When Mr. Friedman, a contract worker at Kaiser in April of 1998, refused – for moral, ethical and religious reasons – to take a mumps vaccination that included material from chicken embryos, this employment contract/work offer with Kaiser was canceled and a full-time work offer was rescinded and he was removed from Kaiser under his contract.

The reasons that Mr. Friedman refused the test was because it is grown in chicken embryos, violating his Ethical Vegan beliefs, which prohibit the eating, wearing or using of any animal products. According to the Friedman's Ethical Vegan belief system, egg-laying hens suffer greatly in chicken factory farms, and the use of unborn chickens to culture the mumps vaccine causes further unnecessary deaths of chickens.

Mr. Friedman alleged that at the time of his filing his Complaint, that for the prior nine years, Friedman had been a strict Ethical Vegan, meaning that he believes that all living beings must be valued equally and that it is immoral and unethical for humans to kill and exploit animals, even for food, clothing and the testing of product safety for humans. Among the consequences of this belief are that Mr. Friedman cannot eat any animal based substances, such as meat, milk products, eggs, honey, or any other food which contains ingredients derived from or tested on animals, that Mr. Friedman cannot use products which have been tested for human safety on animals or which derive any of their ingredients from animals such as cleaners, soap or toothpaste. Friedman asserts these views as spiritual in nature, that he holds them with the strength of traditional religious views, that Mr. Friedman's views are so strong that he has even been arrested for civil disobedience actions at animal rights demonstrations, that these beliefs occupy a position in the Mr. Friedman's life parallel to that filled by God in traditionally religious individuals adhering to the Jewish, Christian or Muslim Faiths. [See lower court's order, p. 141a].

When on March 26, 1998, Kaiser informed Mr. Friedman that Kaiser required that Mr. Friedman undergo an immunization for mumps, Mr. Friedman checked with the Centers for Disease Control and Prevention, and learned that the mumps vaccine is grown in chicken embryos, and according to Mr. Friedman, being inoculated with the mumps

vaccine therefore was in violation of his Ethical Vegan beliefs. Mr. Friedman advised Kaiser that he was however, willing to comply with the spirit of the immunization requirement by some means other than subjecting himself to inoculation with the vaccine for mumps, including being checked periodically for mumps symptoms, following any other regimen not involving the suffering or death of an animal, and even agreeing to work off-site. Mr. Friedman's direct supervisor at Kaiser was willing to accommodate Friedman, however, the upper management/human resources department was not, and on or about April 10, 1998, Mr. Friedman was told that was his last day, and termination of his employment agreement. [See lower court's order, at Appendix, pages 141a]. In doing so, Kaiser failed to attempt to reasonably accommodate Mr. Friedman's Ethical Vegan beliefs when he refused the mumps vaccination.

REASONS FOR GRANTING WRIT

The considerations and factors in determining whether to grant certiorari are set forth in *Supreme Court Rule* 10. The Court should grant certiorari because a court of appeals decision conflicts with a Supreme Court decision. Further, that court of appeals decision that conflicts with the Supreme Court decision was incorporated in the state court decision at issue.

The court below noted that the regulation at issue, 2 *C.C.R.* § 7293.1, defines "religious creed" as including "any traditionally recognized religion as well as beliefs, observations, or practices which an individual sincerely holds and which occupy in his or her life a place of importance parallel to that of traditionally recognized religions." The court noted that the regulation espouses a concept of religion that emanates from two U.S. Supreme Court cases, *United States v. Seeger*, 380 U.S. 163 (1965), and *Welsh v. United States*, 398 U.S. 333 (1970), which cases involved conscientious objection to military service. In these two cases, this Court

took an expansive view of religion, in holding that a belief, to qualify as religious, need only occupy a place in the life of its possessor "parallel to that filled by the orthodox belief in God." *Seeger.* This Court in *Seeger,* however, noted that "religion" may not include essentially political, sociological, philosophical or economic views or personal beliefs." However, the manner in which the court below defined "religion" and "religious creed" rules afoul of this Court's *Seeger* decision.

The Court may grant certiorari where a case presents a new twist on a constitutional issue. For example, while the constitutionality of laws prohibiting lawyers from engaging in direct, personal solicitation of prospective clients had been considered by the Court, the constitutionality of such a ban applicable to *accountants* had not. Consequently, the Court granted certiorari to decide whether states could prohibit accountants from engaging in personal solicitation. *Edenfield v. Fane,* 507 US 761, 763, 113 S.Ct. 1792, 1796 (1993). By the same token, this Court should consider whether it should expand the *Seeger/Welsh* holdings to employment discrimination law and the definition of religion.

The Court should grant certiorari because the decision involves an important federal question that should be settled by the Supreme Court. The Court may grant certiorari if a case involves a significant issue of public policy. For example, the Court granted certiorari to settle divisions among the courts of appeals regarding the admissibility of expert scientific testimony before general acceptance of the scientist's methodology or conclusions. *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 US 579, 585, 113 S.Ct. 2786, 2792 (1993).

Historically, there has always been much confusion regarding what is and what is not a religion under the law,

both State and Federal. Further, the Court of Appeal here was the first court to set forth a definition in California for a religion under the *FEHA*.

Although, the *United States Equal Employment Opportunity Commission* ("EEOC") issued a *Determination* in another case [Anderson v. Orange County Transit Authority, (San Diego) Charge No. 345960598] that essentially said that Veganism is the equivalent of a religious belief under *Title VII of the Civil Rights Act of 1964*, as amended, prior to this case herein, [See Appendix, p. 272a], there is no known case dealing directly with Veganism or Ethical Veganism as a religious belief or creed. However, there is a Canadian case that held that a prisoner who held a belief that "consumption of animal products is morally wrong" can be protected under a "freedom of conscience," equivalent to a freedom of religion. That case stated that "Motivation for practi[c]ing vegetarianism may vary, but, in my opinion, its underlying belief system may fall under an expression of 'conscience.'" [*Jack Maurice v. Attorney General of Canada*, 2002 FCT 69 (Docket T-1487-99) (Decided January 21, 2002), <http://decisions.fct-cf.gc.ca/fct/2002/2002fct69.html>]. [Appendix, p. 275a].

The Court of Appeal's new definition of "religious creed" under the *FEHA* has several problems, including that it tests the reasonableness of the adherent's beliefs, which runs against the United States and California Constitutions' Establishment and Equal Protection Clauses. A more appropriate test or standard can be derived from the conscientious objector cases, such as *United States v. Seeger* (1965) 380 U.S. 163, 13 L.Ed.2d 733, 85 S.Ct. 850.

The settlement of the definitions of "religion" and "religious beliefs" and "religious creed" under the *FEHA*, as well as federal law, are important questions of law. Historically, there has always been much confusion regarding

what is and what is not a religion under the law, both State and Federal. Further, the Court of Appeal here was the first court to forth a definition in California for a religion under the *California Fair Employment and Housing Act ("FEHA")*, i.e., *Government Code* §12900, et seq.

The fact that a conflict exists with the *Anderson v. Orange County Transit Authority*, Charge No. 345960598, and *Jack Maurice v. Attorney General of Canada*, 2002 FCT 69 (Docket T-1487-99), holdings, albeit, non-binding and/or out of country, shows that this case to be ripe for review by this Court. The settlement of the definitions of "religion" and "religious beliefs" and "religious creed" under the *FEHA* are important questions of law.

The present case appears to be a case of first impression not only as to whether Ethical Veganism qualifies as a religious belief or the legal equivalent of a religious belief under discrimination laws, with a public policy of remedying discrimination. Veganism and Ethical Veganism, as "non-traditional" beliefs, provides a perfect vehicle for this Court to set forth the correct definitions of religion and religious beliefs and creeds. While no one would question whether Judaism, Christianity or Islam are religions, there are a multitude of other "non-traditional" religions in this Country that could provide such an inquiry. Veganism and Ethical Veganism provides the ideal framework for this Court to set forth a definition of religion that complies with both the spirit of the *FEHA*, as well as also follows other precedents and further does not violate the Constitution. As America becomes more and more diverse and cosmopolitan, both in religions as well as cultures, the issue of what is a religion becomes of great importance. Furthermore, the area of law, employment discrimination law, is an important area, in particular, because employment is necessary in order to earn a living and purchase the necessaries of life, such as food, clothing and

shelter. Not only is the right to religious freedom protected by the *First Amendment* to the *United States Constitution,* but also the right to "life, liberty, or property," referred to in *Fourteenth Amendment* to the *United States Constitution,* sometimes has been deemed to include the right to contract, including contracts of personal employment.

While the issue of "what is a religion" is most known from this Court's conscientious objector cases, there appears to be no known appellate case determining whether Ethical Veganism is a religion. In the conscientious objectors cases, the issue was whether forced military service violates a true religious belief, or whether the objector is simply alleging the belief as a ruse to avoid serving in the armed forces. See, for example, *United States v. Seeger* (1965) 380 U.S. 163, 13 L.Ed.2d 733, 85 S.Ct. 850. Apparently, the courts are not to test the "truth" or "validity" of an alleged religious practice, but to look instead to see if the person is feigning belief to avoid an otherwise legitimate obligation.

This case presents an issue of first impression that is a matter of extreme public policy, as reflected by Constitutional protections. The *United States Constitution, First Amendment,* provides extensive protections to individuals based upon their religious beliefs. Protection of an individuals religious beliefs and reverse side of the coin, protection from discrimination on the basis of those beliefs, is of utmost fundamental importance in our Constitutional structure of government in this country. Therefore, this matter and the reach of religious belief protection is of extreme fundamental public policy. This public policy is reflected in the fact that while in ordinary breach of contract or wrongful termination cases, only economic damages are allowed, and such noneconomic damages as pain and suffering and punitive damages are not allowed, those noneconomic damages are allowed in discrimination cases, including religious discrimination cases.

The issue here is whether the provisions and protections of anti-discrimination laws in employment, such as the *California Fair Employment and Housing Act ("FEHA")* apply to Ethical Vegans; Friedman contends that they do, and for good reason, to protect not only his own beliefs, but those of all denominations and non-denominations of beliefs that are considered religious or the equivalent to the believer. A determination herein that Ethical Veganism is protected by the *FEHA* will protect everyone's right to be free from religious discrimination in the work place, not just Vegans.

The Court of Appeal used Federal case law precedent. One of the cases, *United States v. Meyers*, 906 F.Supp. 1484, 1504 (D. Wy. 1995), aff'd, 95 F.3d 1475 (10th Cir. 1996), cert. denied, 522 U.S. 1006 (1997), held that the beliefs held by the founder of the Church of Marijuana more accurately espouse a philosophy or way of life rather than a religion. The *Meyers* case was based upon illegal conduct (marijuana usage), whereas Friedman's beliefs are clearly *not* illegal. It is disingenuous to compare beliefs in illegal activities (which anti-discrimination statutes do not protect) compared to Friedman's sincere Ethical Vegan belief in non-violence to animals of all kinds (which clearly is not illegal).

Friedman's Ethical Veganism beliefs are sincere. They are not illegal. Friedman's beliefs occupies the place of importance parallel to religion. It should be noted that "vegetism" is not the same as Ethical Veganism, let alone Veganism. Again, "vegetism" is not Veganism. The reason for this is "vegetism" does not include the moral and ethical components that Veganism includes. Further, Friedman's views do fit the *Meyers* factors. Veganism and Ethical Veganism are not confined to one question alone, it is much broader. Vegans do not just eat vegetables (as under "vegetism"), but additionally such Vegan beliefs encompass all aspects of one's beliefs, from not only not eating meat, but

not eating dairy products, not using soap derived from animal products, not wearing leather, wool, silk or other animal products, and, more to the point of this case, not getting vaccinated with vaccines made, derived or tested on animals.

The fact that the Court of Appeals stated that numerous state and federal courts have adopted the definition of religion that the Court of Appeals adopted shows the importance of this Court issuing a Writ. If this definition of religion is unconstitutional, it affects a large portion of the United States, and this Court should correct that situation.

All forms and aspects of religion, however eccentric, are generally included. *Cooper v. General Dynamics, Convair Aerospace Div.* (5th Cir. 1976) 533 Fed.2d 163, 168-169, *cert denied,* 43 U.S. 908 (1977). A religion does not require a formal organization or a "written form" to be protected by equal employment opportunity laws. [See *Brown v. Dade Christian Schools, Inc.* (5th Cir. 1997) 556 Fed.2d 310, 311-312, cert. denied, 434 U.S. 1063].

Further, it is not the case that only "institutional religions" are protected by the *FEHA* (and *Title VII,* as well). Neither the case law, nor the Code and Regulations promulgated thereby, support such a position that only "institutional religions" are protected. It should be kept in mind that the various branches of the Protestant Christian churches, such as Methodist, Baptist, Lutheran, Episcopalian, Presbyterian, etc., at one time were *not* considered "institutional religions," with the Roman Catholic Church being the only "institutional" Christian religion, hence the term "Protestant," as in "protest."

A California tax case that set forth a very broad definition of religion and religious beliefs, *Fellowship of Humanity v. County of Alameda* (1957) 153 Cal.App.2d 673, 315

P.2d 394, has even been cited as authority in two of this Court's cases. (See *School Dist. v. Schempp* (1963) 374 U.S. 203, 302, 10 L.Ed.2d 844, 903, 83 S.Ct. 1560, 1613, and *Torcaso v. Watkins* (1961) 367 U.S. 488, 495, 6 L.Ed.2d 982, 987, 81 S.Ct. 1680, 1684). This case included "Taoism, classic Buddhism, and Confucianism" as religions. Id., at pp. 684, 690. And also includes "humanists" and others that do not believe in "God or gods." Id., at pp. 680, 687 and 690. This case defined religion primarily in a constitutional setting, and should include Friedman herein's Ethical Vegan beliefs. However, the definition of religion in a anti-discrimination setting, such as *FEHA* here, should be broader than that in the constitutional (usually, Establishment Clause) setting in order to serve the differing public policy purpose of eliminating discrimination in the workplace.

The Establishment Clause and the Due Process Clause provide the minimum protections required. The States (and Congress) should be able to provide more protections, but not less protections as was provided here. Neither the States nor Congress should be able allowed to have an anti-religious discrimination law that does not pass the initial test of compliance with the Establishment Clause and the Due Process Clause of the United States Constitution. The Establishment Clause and he Due Process Clause should set the initial standards.

Note that the holding in the decision here, unless set aside by this Court, not only does not protect Ethical Vegans, but also may not protect these "Eastern" religions, which this Court previously stated should be protected, because they may not fit the three prong test set forth in the State Court of Appeal's Opinion, which adopted a standard by several of the Federal Appellate Courts.

Similarly, guidelines issued by the Internal Revenue

Service to determine if an organization is organized and operated exclusively for religious purposes focus on a nonsecular definition of religion. The guidelines posit two basic questions: 1) Are the organization's beliefs truly and sincerely held by those professing them, as opposed to a mere sham, and 2) Are the practices and rites associated with the organization's belief or creed illegal or contrary to clearly defined public policy. If beliefs are truly and sincerely held, and practices do not violate law or clearly defined public policy, the Service will not question the religious nature of the organization's beliefs. [*Internal Revenue Manual Handbook* §[7.8.1]3.3.2 (1999)].

Ethical Veganism extends beyond trivial dietary preferences. Diet is merely a small part of observing a non-exploitive relationship with the people and animals of this world. Ethical Veganism is a relational lens through which to view the world. Ethical Vegans are not "speciesist" and value the sanctity of all life, seeking to exclude from their life, as far as possible and practical, all forms of exploitation of, and cruelty to, animals for food, clothing or any other purpose. Consequently, Ethical Vegans do not eat meat, fish or poultry, and do not use other animal products and by-products including eggs, dairy products, honey, leather, fur, wool, soaps and toothpastes which contain lard, etc., and Ethical Vegans do not participate in the biomedical experimentation on animals and avoid activities or products which encourage it. As can be seen by this "list" of prohibited activities, being vegetarian is only one small part of being an Ethical Vegan. While being a Vegan or Ethical Vegan necessarily implies that one is a vegetarian, the opposite is not true; being a vegetarian does not imply one is an Ethical Vegan, let alone a Vegan. A recent poll estimates there are a half million Vegans in the continental United States. A 1994 poll conducted by the Vegetarian Resource Group of 1,978 men and women reflects an estimated 500,000 Vegans in the United States. Debra

Wasserman & Reed Mangels, Vegan Handbook at 229-230 (1996). There is a common ethical principle shared by all Vegans which is a reverence for life and desire to live with, as opposed to depend upon, the others species of the planet. Veganism is therefore not some bizarre trivial personal belief, but is a sincerely held set of moral and ethical values that rise to the level religious beliefs, and should be afforded religious protections as such. In addition to these vegans and Ethical Vegans, there are millions of adherents to other non-traditional religions. Therefore, it is a matter of great importance and public concern that this Court set the proper definitions of religion and religious beliefs and creeds subject to the *FEHA's* employment protections.

The Court of Appeal's Definition of "Religious Creed" Does Not Meet Federal Constitutional Standards. *California Government Code* §12926(o), defines the religion terms as meaning that "'Religious creed,' 'religion,' 'religious observance,' 'religious belief, and 'creed' include all aspects of religious belief, observance, and practice." 2 *Cal. Code Reg.* §7293.1, regarding "Establishing Religious Creed Discrimination," states, emphasis added, that "'Religious creed' includes any traditionally recognized religion as well as beliefs, observances, or practices which an individual sincerely holds and which occupy in his or her life *a place of importance parallel to that of traditionally recognized religions. . . ."* 2 *Cal. Code Reg.* §7293.3 likewise requires employers to "make reasonable accommodation to the known religious creed of an applicant or employee." Even the under federal regulations, "religious practices" include moral or ethical beliefs about what is right and wrong that are sincerely held with the strength of traditional religious views. This regulation has even been used to show that even if no religious group espouses such beliefs, the belief can still be a religious belief of the employee or prospective employee, which would appear equally applicable under *FEHA*.

Clearly, under the regulatory definition, Mr. Friedman beliefs about Ethical Veganism qualify as "religious creed." Mr. Friedman has plead that he "holds these beliefs with the strength of traditional religious views. . .", and that "These are sincere and meaningful beliefs which occupy a place in Friedman's life parallel to that filled by God in traditionally religious individuals adhering to the Christian, Jewish or Muslim Faiths."

While the Court acknowledges that this was a case of first impression as to what the definition of "religious creed" was under the *FEHA*, the Plaintiff has already plead, or it can be considered reasonably plead when the complaint is viewed in a reasonable light most favorable to the Plaintiff, the requirements under such a definition. Notwithstanding this, the Court of Appeals new definition of "religious creed" is problematic and confusing and does not make for a good test or standard. More importantly, it is unconstitutional.

The several tests mentioned in the opinion culminate in this court's conclusion, which is Judge Adams' three-prong test. "First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters." While this may not be simple veganism, it is Ethical Veganism. Ethical Veganism asks what is the ultimate meaning of life and concludes veganism in the broadest sense, compassion for all life, amelioration of suffering, advocacy of happiness and cooperation. The query and conclusion makes it ethical. These are similar core tenets to Quakers and Buddhists and countless other denominations of a myriad of religions. While the foundation is not on a supreme being as the Quakers rely upon, it rests on a philosophy revealed by Peter Singer much like Buddhism was a philosophy revealed by Siddhartha. "Imponderable matters" is a strange qualifier as members of all sorts of traditional religions would claim their religion is ponderable--able to be precisely evaluated. Not that they

would necessarily claim they would succeed. There are, for example, Christians who rely heavily on faith and those who rely heavily on formal logic, and that is why there are Christian scholars. The former claim religion is imponderable, the latter do not. If the court is asking for epistemology, the elemental meaning of Ethical Veganism, it may very well be imponderable depending on who is asked. Therefore, this criteria or prong is problematic and fails as a proper test. Further, it should be noted that the court incorrectly states that "There is no apparent spiritual or otherworldly component to plaintiff's beliefs." Yet, the court earlier in its opinion cites to just such allegations contained in the Plaintiff's complaint, that "He lives each aspect of his life in accordance with this system of ***spiritual beliefs***[, and] [t]his belief system[] guides the way that he lives his life[, and] [Plaintiff's] beliefs are ***spiritual*** in nature and set a course for his entire way of life[, and] he would disregard elementary self-interest in preference to transgressing these tenets." Further, in the complaint as quoted in the opinion, "violating natural law, foundational creeds, beliefs spiritual in nature, disregarding elementary self-interest, guiding the way I live my life" are all fundamental. "Natural law, foundational creeds, and beliefs spiritual in nature" are addressing ultimate questions. "Natural law, spiritual beliefs" are matters addressing deep and imponderable matters. Plaintiff has therefore satisfied the first prong of this court's new definition of religious creed. The complexity and inconsistency of the Court of Appeal's new test for "religious creed," albeit, adopting a standard used by several Federal Appellate Courts, is shown by the fact that, as shown here, while Mr. Friedman has satisfied the test, the Court of Appeal came to the opposite conclusion.

"Second, a religion is comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching." The distinction between "comprehensive nature" and "an isolated teaching" is a question of fact. Taoism, for example,

has the isolated teaching of balance which is applied comprehensively to the universe. Otherwise, is the court claiming that simple religions are unreasonable because they are not complicated? This would topple any new religion because traditional religions have hundreds or thousands of years to become comprehensive. This is an unconstitutional test of reasonableness. Ethical Veganism is comprehensive to the Plaintiff, extending to every aspect of his life, even his dreams. A nonvegan may not think it is comprehensive, but that could also apply to others' views of anyone else's religion. Since the Plaintiff's Ethical Vegan belief system encompasses all aspects and elements of not only his life, but the lives of all animals, the belief system is comprehensive and satisfies the second prong of this court's requirements for a religious creed. Therefore, the second prong is likewise problematic and fails as a proper test. Would Taoism be considered a religion under this test?–Probably not.

The court's definition of religion is heavily biased in favor of Western religions. It is questionable whether Taoism, classic Buddhism or Confucianism could satisfy the court's requirements of "religious creed," as set forth in the opinion of this court. And, if as it should be, Confucianism is considered a religious creed, so too should Ethical Veganism. Ethical Veganism has been around at least since 4 B.C.E. as practiced by Apollonius of Tyana -- who wore bark for sandals, refused meat and all animal products, even refusing a wax sculpture tribute to him because it came from bees. Modernly, Peter Singer (a Princeton professor of ethics) consolidated several philosophies about what it means to be human in the sense of moral obligations. These writings have become the religious tenets of millions of adherents. Under Apollonius or Singer, Ethical Veganism is perfectly analogous to Confucianism, and should be considered a religion.

"Third, a religion often can be recognized by the

presence of certain formal and external signs." This again is biased against new religions and is an unconstitutional test of reasonableness. Even so, some Ethical Vegans recognize Gandhi's birthday (October 2nd) as a holiday, and World Vegan Day is November 1st. Further, Peter Singer may be considered a founder of the compiled philosophy and may have many teachers, the equivalent of "ministers." In fact, if the Plaintiff were allowed to amend his complaint, he could plead that in California, a legal marriage license has been issued for a marriage to be performed by an Ethical Vegan, and that in Massachusetts, the state approved the issuing of same. There are vegan songs, heroes, and many Ethical Vegans aim to convert others to Ethical Veganism. In this sense, Ethical Veganism is evangelical or proselytizing as are many Christian religions. Friedman can allege that he has a tattoo on his left arm symbolizing Ethical Veganism, as some Christians would tattoo a crucifix. In terms of what the Friedman already pled in his complaint–Friedman pled his diet (setting forth what he cannot eat under Ethical Veganism) and clothing (setting forth what he cannot wear under Ethical Veganism) are traditional "formal and external signs" of religion. Similarly, the civil disobedience comparison to Operation Rescue is an external sign of religious faith and devotion to these values, or the great sacrifice Jehovah's Witnesses are known to take to retain their religious purity. But as the Court of Appeals points out, the third prong is not really a deciding factor is its absence does not prevent a belief being held to be a religious one. But when should the third prong be used under the Court of Appeals new standard?–The Court of Appeals is not clear on this, nor are the prior Federal cases.

All of these issues and problems show that the Court of Appeals new test is problematic and inappropriate. In light of the importance of religion and employment for individuals, this Court should grant a writ and fashion a minimum

appropriate test or standard for "religious creed," consistent with the United States Constitutional protections in the Establishment and Due Process Clauses of the Constitution.

Furthermore, it is a matter of public policy significance that will affect the important rights of other parties in other cases as to the proper definition of religion and religious beliefs and creeds under not only the *FEHA*, but other State's religious discrimination laws, and under *Title VII*. This case involves the area of overlap between what may be the two most important aspects of an individual's life-religion and work. Therefore, this Court should grant a Writ.

The Court of Appeal's new rule of law, albeit, a rule that was previously fashioned by several Federal Appellate Courts, violates the Establishment Clause of the Constitution, especially in light of the fact that the determination of whether the plaintiff's Ethical Vegan beliefs were a "religious creed" were determined as a matter of law, rather than by a fact-finder after expert testimony religious scholars. The case should have gone to a jury (or at a minimum, a judge on summary judgment), to determine factually whether the Plaintiff's Ethical Vegan beliefs qualify as a "religious creed."

The Court of Appeals says the trend is to define religion more narrowly by comparing proclaimed religions to traditional religions. This is a violation of the Free Exercise and Establishment Clause by setting up approved religions, which other asserted religions are to be compared. Furthermore, it violates the Due Process Clause. "Free Exercise" is not intended to only apply to "traditional religions," which, as mentioned above, at one point did not even include the Protestant Church, hence the name "Protest"-ant. The court therefore favors traditional religions and disfavors non-traditional religions, a violation of the Establishment Clause which is to give no preference. Indeed,

the government can only test sincerity, not reasonableness; otherwise, the court is saying that traditional religions are reasonable and untraditional religions are reasonable only if they are like traditional religions. The Court of Appeals refers to "a place of importance parallel to that of traditionally recognized religions." This again may violate the Establishment Clause which prohibits the setting up what is a reasonable religion and those that are not reasonable, and those considered not reasonable by the court, are not considered religions.

Neither the trial court nor the court of Appeals court should have tested the reasonableness of Plaintiff's religion through the above test. At a minimum, the issue of whether or not the Plaintiff's Ethical Vegan beliefs are a "religious creed" should have been decided by a trier of fact, not as a matter of law on a demurrer. The determination of religious beliefs and violations of the Establishment Clause of the Constitution are issues of important public concern, and this Court should therefore grant a Writ of Certiorari.

CONCLUSION

THEREFORE, Petitioner JEROLD DANIEL FRIEDMAN, also known as JERRY FRIEDMAN, requests of this Court that it GRANT his Petition for a Writ of Certiorari to the Court of Appeal for the State of California, Second Appellate District, Division Five.

RESPECTFULLY SUBMITTED,

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